

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANTHONY DeFRANCO,

Plaintiff,

V.

WILLIAM WOLFE, et al.,

Defendants.

Civ. No. 04-0230 Erie
Magistrate Judge Baxter

ORDER

Plaintiff has filed a Motion for Reconsideration of Order (Doc. 280), requesting that the court reconsider its June 11, 2007 Order (Doc. 279) insofar as he maintains he has alleged a retaliatory transfer claim against Defendant Brooks. Plaintiff believes he has properly asserted the claim against Defendant Brooks based on his pleadings and taking into consideration his pro se status. We acknowledge that Plaintiff may be correct, but our June 11, 2007 Order only referred to this issue in passing as there was no ruling by the Magistrate Judge on this issue in the Report and Recommendation we were considering. In addition, it did not appear to the Court that the issue was raised for resolution before the Magistrate Judge. Thus, we believe that this issue is not properly raised as motion for reconsideration, but instead should be raised before the Magistrate Judge. We will thus deny the motion for reconsideration, as a motion for reconsideration but we will direct that this issue be considered by the Magistrate Judge. In doing so, the Magistrate Judge may rely on Plaintiff's assertions

and arguments presented in his Motion for Reconsideration (Doc. 280), and may in her discretion order the parties to file supplemental pleadings on this issue to the extent the Magistrate Judge believes such pleadings are necessary. In other words, Plaintiff need not file a new pleading or motion on this issue unless directed to do so by the Magistrate Judge

AND NOW, to-wit, this 21st day of June, 2007, it is hereby

ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion for Reconsideration of Order (Doc. 280) is hereby denied. IT IS FURTHER ORDERED that the issue raised in Plaintiff's Motion for Reconsideration of Order (Doc. 280) be and hereby is referred to the Magistrate Judge for disposition as set forth above.

Maurice B. Cohill, Jr.
Maurice B. Cohill, Jr.
Senior United States District Judge

cc: Anthony Defranco, pro se
counsel of record